

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

JOSEPH LEROY MAYFIELD, JR., et al.,

Plaintiffs,

v.

NEWREZ LLC d/b/a SHELLPOINT
MORTGAGE SERVICING, et al.,

Defendants.

Case No. 3:24-cv-00638

NOTICE OF REMOVAL

Pursuant to §§ 1331, 1441, and 1446, Defendant, NewRez LLC d/b/a Shellpoint Mortgage Servicing (“Defendant”), hereby gives notice, with full reservation of any and all defenses and claims, of removal of this civil action from the Superior Court for Mecklenburg County, North Carolina, where it is currently pending as Civil Action No. 24-CVS-023676-590, to the United States District Court for the Western District of North Carolina. For the reasons stated below, this Court has subject matter jurisdiction over the action under 28 U.S.C. § 1331 because the Complaint asserts claims arising under federal law. In support of the removal, Defendant states as follows:

INTRODUCTION

1. Plaintiffs, Joseph L. Mayfield and A. Burton Shuford as Chapter 7 Trustee (“Plaintiffs”) filed this civil action on May 23, 2024, in the Superior Court for Mecklenburg County, North Carolina. A copy of the Complaint and an accompanying summons was received by Defendant on June 10, 2024. A copy of the pleadings, processes, and orders received by Defendant in the state court action is attached hereto as **Exhibit A**.

2. The Complaint could have been filed originally in this Court pursuant to 28 U.S.C. § 1331 because the Complaint asserts claims arising under federal law.

3. Therefore, this action is removable under 28 U.S.C. § 1441 based upon federal question jurisdiction.

I. Because Plaintiff alleges violations of the Fair Debt Collection Practices Act, this case arises under federal law.

4. A federal question can arise in two instances: (1) when federal law creates a plaintiff's right to relief and (2) when state law creates the plaintiff's right to relief but the resolution of the case "necessarily depends . . . on a substantial question of federal law." *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 28 (1983).

5. Plaintiff asserts claims under the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* ("FDCPA"), in addition to other claims purportedly arising under state law. Accordingly, federal law creates the basis for Plaintiff's asserted right to relief with respect to the FDCPA claims.

6. This Court may exercise supplemental jurisdiction under 28 U.S.C. § 1337(a) with respect to any of Plaintiff's claims that do not arise under federal law but are "part of the same case or controversy." 28 U.S.C. § 1337(a). A state law claim is part of the same case or controversy when it shares a "common nucleus of operative fact" with the federal claims. *White v. Cty. of Newberry, S.C.*, 985 F.2d 168, 171 (4th Cir. 1993).

7. Plaintiffs' state law claims under the North Carolina Collection Agency Act and North Carolina Debt Collection Act address substantially the same allegations of improper debt collection and are therefore part of the same case or controversy as Plaintiff's federal claims.

II. The Other Prerequisites for Removal Are Satisfied.

8. This lawsuit is a civil action within the meaning of the Acts of Congress relating to removal of causes.

9. This Notice of Removal is timely filed within 30 days following receipt of the Summons and Complaint by Defendant.

10. This matter has not been previously removed.

11. Removal at this present time will not result in any unfair prejudice to Plaintiff.

12. The District Court of Mecklenburg County is situated within this district and division, making a removal to this Court proper pursuant to 28 U.S.C. § 1441(a).

13. Defendant Planet Home Lending, LLC has consented to this removal through its counsel. Upon information and belief, Defendants ARCPE 1 LLC and ARC Select Services, LLC have not yet been served with process and their consent is not required to removal. Upon further information and belief, Defendant anticipates that ARCPE 1 LLC and ARC Select Services, LLC will likely consent to removal once they have been served with process.

14. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of Defendant's right to assert any defense or affirmative matter, whether pursuant to Fed. R. Civ. P. 8(c), Fed. R. Civ. P. 12, or otherwise, including, but not limited to, the defenses of failure to state a claim upon which relief can be granted, lack of personal jurisdiction, or other defenses.

15. Pursuant to 28 U.S.C. § 1446(d), a Notice of Filing, with a copy of this Notice of Removal (without exhibits), will be filed promptly with the Clerk of Superior Court of Mecklenburg County, North Carolina. Defendant is also giving prompt written notice to Plaintiff of the filing of this Notice of Removal.

16. If any question arises as to the propriety of the removal of this action, Defendant requests the opportunity to present a brief and oral argument and to conduct discovery in support of its position that subject matter jurisdiction exists.

WHEREFORE, Defendant in this civil action, respectfully requests that the above-captioned action now pending in the Superior Court for Mecklenburg County, North Carolina, be removed to the United States District Court for the Western District of North Carolina, and for such other and further relief as this Court may deem just and proper.

This the 9th day of July, 2024.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

/s/ G. Benjamin Milam

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via first class mail, postage prepaid and by electronic mail to:

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Counsel for Plaintiff

on this the 9th day of July, 2024.

/s/ G. Benjamin Milam
G. Benjamin Milam (NC Bar No. 45483)